



# WASHOE COUNTY

"Dedicated To Excellence in Public Service"

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CM/ACM \_\_\_\_\_  
Finance DW  
DA NE  
Risk Mgt. N/A  
Clerk CS  
Comptroller CH

## STAFF REPORT

BOARD MEETING DATE: August 9, 2016

**DATE:** July 15, 2016

**TO:** Board of County Commissioners

**FROM:** Trevor Lloyd, Senior Planner, Planning and Development Division  
Community Services Department, 328.3620, [tlloyd@washoecounty.us](mailto:tlloyd@washoecounty.us)

**THROUGH:** William H. Whitney, Division Director, Planning and Development  
Community Services Department, 328-3617, [bwhitney@washoecounty.us](mailto:bwhitney@washoecounty.us)

**SUBJECT:** Hearing, discussion, and possible action on Case No. AX16-002 (Rejection of Mil Drae Abandonment Application), an appeal of the Board of Adjustment's decision to deny the appeal of the Director of Planning and Development's decision to reject the abandonment application to abandon Mil Drae Lane for incompleteness. The Board of County Commissioners may take action to confirm the Board of Adjustment's denial or reverse the Board of Adjustment's denial and allow the abandonment application to proceed to the Planning Commission.

The appellants are Peter Ernaut, Ryan Dolan, James and Maureen Nunnally, Roland and Tina Scarselli, Lance Faulstich and Herbert and Susan Nichols. The subject property is Mil Drae Lane (APN: 040-581-20) and located within the Southwest Truckee Meadows Area Plan and South Truckee Meadows/Washoe Valley Citizen Advisory Board boundaries, Section 1, Township 18N, Range 19E, MDM. The Development Code articles applicable to this amendment are Article 806, Vacations and Abandonments of Easements or Streets and Article 912, Establishment of Commissions, Boards and Hearing Examiners. (Commission District 2).

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### SUMMARY

Confirmation or reversal of the Board of Adjustment's denial of an appeal of the Director of Planning and Development's decision to reject the abandonment application to abandon Mil Drae Lane.

Washoe County Strategic Objective supported by this item: Safe, secure, and healthy communities.

### PREVIOUS ACTION

June 2, 2016, Board of Adjustment. After conducting a public hearing, taking public testimony and discussing the proposed appeal of the decision of the Director of Planning and Development to reject the application for incompleteness, the Board of Adjustment denied the appeal.

AGENDA ITEM # 18

## **BACKGROUND**

On February 16, 2016, the firm of Lewis, Roca, Rothgerber, Christie, LLP, on behalf of several property owners, submitted an application to abandon a 2.523 acre property identified as Mil Drae Lane, which is used as a roadway/access for up to 13 parcels.

The abandonment application involved a two part request. The first part of the request asked Washoe County to accept an offer of dedication for the subject property - Mil Drae Lane. The second part of the request involved Washoe County abandoning Mil Drae Lane immediately after accepting the dedication. The abandonment application requested that Mil Drae Lane be abandoned to the following seven abutting properties/owners:

- 1) Ryan M. Dolan Family Trust (APN 040-582-02)
- 2) Roland and Tina Scarselli (APN 040-582-03)
- 3) Nunnally Family Trust (APN 040-582-04)
- 4) Ernaut Family Trust (APN 040-581-19)
- 5) Faulstich Family Trust (APN 040-581-12)
- 6) Herbert and Susan H Family Trust (APN 040-581-13)
- 7) Herbert and Susan H Family Trust (APN 040-581-14)

As to the abandonment request, Nevada law generally allows any abutting property owner to file a petition for the abandonment of any street or easement owned by the city or county. The local government is empowered to create a procedure for the processing of abandonment requests. Once a valid request is filed, the matter is set for a hearing and the local government can abandon the property if it determines the public will not be materially injured by the proposed abandonment. Conditions can be imposed on any abandonment.

As to the request to accept the offer of dedication for the roadway itself, when a final subdivision map is filed, Washoe County generally must accept or reject all offers of dedication in the map. If rejected, however, the County can rescind its rejection at any time and accept the offer of dedication by action of the Planning Commission or governing body per NRS 278.390. To date, Washoe County has not accepted the offer of dedication for Mil Drae Lane and it is currently held in private ownership.

The Director of the Washoe County Planning and Development Division rejected the abandonment application due to insufficient submittal requirements. Specifically, the application did not contain the required signed owner affidavits for the property subject to the abandonment request. Washoe County Code (WCC) Section 110.806.10 enables the Director to prepare supplemental guidelines for the submission of applications for abandonments. Submittal requirement number 3, of the Abandonment Development Application Submittal Requirements sheet, states that *"the Owner Affidavit must be signed and notarized by all owners of the property subject to the application request."* The owners of record, as specified by the Washoe County Assessor's records, differ greatly from the owners identified within the application. As shown below, the names of the signed owner affidavits (numbered 1 to 7 above) differ greatly from the official ownership records provided by the Washoe County Assessor's Office. The Assessor's Office lists Mil Drae Lane (APN: 040-581-20) under the following ownership:

- 1) Ernaut Family Trust (appears on the signed affidavit)
- 2) Darrell Bennett
- 3) Wilma Bennett
- 4) Timothy and Marsha Grant
- 5) Herbert and Susan Nichols Family Trust (appears on the signed affidavit)
- 6) Robert and Jerrady Hawkins
- 7) Larry D. Klaich Family Trust
- 8) William and Sally Burrows
- 9) William and Catherine Lore
- 10) Allyene Milabar

WCC Section 110.806.05 states “No application shall be processed when the information necessary to review and decide upon it is deemed incomplete by the Director.” Therefore, the Director of the Planning and Development Division has rejected the application as incomplete (see Exhibit B).

In their appeal, the appellants contend that owner affidavits are not necessary because the application was submitted as a two-step process and there is an existing offer of dedication for Mil Drae Lane and that Washoe County has the authority to accept the offer of dedication without the owner affidavits. The appellants also contend that a similar abandonment was approved on a short roadway off of Mil Drae Lane, known as Milabar Way several years ago, and that any abutting property owner can petition Washoe County for such an abandonment. See Exhibit A for the complete letter and materials for this appeal.

Staff does not agree with the appellants’ contention that the owner affidavits are not necessary. Even though there is an offer of dedication for Mil Drae Lane, Washoe County has not accepted that offer of dedication. At this time, the property is privately owned and Washoe County cannot proceed with a discretionary permit application without the written approval of all required owners of the property for the proposed action (i.e., the abandonment).

Per WCC Section 110.912.10, the Board may reverse, modify or remand a decision (of the Planning Director) if the decision:

- (a) Was made contrary to the constitution, a statute, an ordinance, or regulation, or the law of the case;
- (b) Exceeds the jurisdiction or statutory authority of the deciding official or body;
- (c) Was made on unlawful procedure;
- (d) Is affected by an erroneous interpretation or other error of law;
- (e) Is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) Is arbitrary or capricious or characterized by abuse of discretion.

**FISCAL IMPACT**

None

**RECOMMENDATION**

It is recommended that the Board of County Commissioners confirm the Board of Adjustment's decision to support the Director of Planning and Development's decision to reject the abandonment application to abandon Mil Drae Lane for incompleteness.

**MOTION**

Should the Board agree with the Board of Adjustment's decision to support the Director of Planning and Development's decision to reject the abandonment application to abandon Mil Drae Lane for incompleteness, staff offers the following motion:

“Move to confirm the Board of Adjustment's decision to deny the appeal of the Director of Planning and Development's decision to reject the abandonment application to abandon Mil Drae Lane for incompleteness.”

**OTHER POSSIBLE MOTION**

Should the Board not agree with the Board of Adjustment's decision to deny the appeal of the Director of Planning and Development's decision to reject the abandonment application to abandon Mil Drae Lane, staff offers the following possible motions:

**Possible Motion to REVERSE the Board of Adjustment's denial of the appeal of the Director of Planning and Development's decision to reject the abandonment application to abandon Mil Drae Lane for incompleteness.**

“Move to reverse the Board of Adjustment's denial of the appeal of the Director of Planning and Development's decision to reject the abandonment application to abandon Mil Drae Lane and allow for the abandonment application to proceed for consideration by the Washoe County Planning Commission.”

Attachments:

- A. Appeal Application
- B. AX16-002 BOA Action Order
- C. AX16-002 BOA Staff Report
- D. June 6, 2016 Minutes of the Board of Adjustment

xc. Appellant(s): Pete Ernaut, 500 Mil Drae Ln, Reno, NV 89511  
Ryan M. Dolan, 460 Mil Drae Ln, Reno, NV 89511  
James and Maureen Nunnally, 490 Mil Drae Ln, Reno, NV 89511  
Roland and Tina Scarselli, 470 Mil Drae Ln, Reno, NV 89511  
Lance Faulstich, 510 Mil Drae Ln, Reno, NV 89511  
Herbert and Susan Nichols, 495 Mil Drae Ln, Reno, NV 89511

Representative: Lewis, Roca, Rothgerber, Christie; LLP, Attn: Garrett Gordon, 50 W. Liberty Street #410, Reno, NV 89501



Appellant Information (continued)	
Cite the specific outcome you are requesting under the appeal: We request the Board of Commissioners to approve the appeal and accept the application to accept dedication, then abandon Mil Drae Lane.	
State how you are an affected individual entitled to file this appeal: The appellants are the applicants requesting Washoe County to accept dedication, then abandon Mil Drae Lane.	
Did you speak at the public hearing when this item was considered?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Did you submit written comments prior to the action on the item being appealed?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

For time limitations imposed for the various types of appeals, please refer to the Washoe County Development Code (WCC Chapter 110) and Nevada Revised Statutes Chapter 278 (NRS 278).

### APPELLANT AFFIDAVIT

STATE OF NEVADA     )  
                                  )  
COUNTY OF WASHOE    )

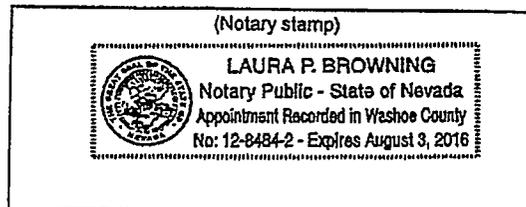
I, GARRETT D. GORDON  
being duly sworn, depose and say that I am an appellant seeking the relief specified in this petition and that the foregoing statements and answers herein contained and the information herewith submitted are in all respects complete, true and correct to the best of my knowledge and belief. I understand that no assurance or guarantee can be given by staff of the Planning and Development.

Signed *Garrett Gordon* ATTORNEY-IN-FACT  
Address 50 W. Liberty St. #410  
RENO, NV 89501

Subscribed and sworn to before me this  
17<sup>th</sup> day of June, 2016.

*Laura P. Browning*  
Notary Public in and for said county and state

My commission expires: 8/3/2016



**Lewis Roca**  
**ROTHGERBER CHRISTIE**

Lewis Roca Rothgerber Christie LLP  
50 West Liberty Street  
Suite 410  
Reno, NV 89501

775.823.2900 main  
775.823.2929 fax  
lrcc.com

Garrett D. Gordon  
Admitted in Nevada  
775.321.3420 direct  
775.321.5569 fax  
ggordon@lrcc.com

March 24, 2016

VIA HAND DELIVERY

Washoe County Board of Adjustment  
1001 E. 9th Street  
P.O. Box 11130  
Reno, Nevada 89520-0027

Re: Appeal of Staff Determination of Incomplete Application  
for Abandonment Case Number AB16-001

Dear Members of the Washoe County Board of Adjustment,

Pursuant to Washoe County Development Code §§ 110.914.05 (f), and 110.912.10, we<sup>1</sup> are appealing the decision received March 14, 2016 in Abandonment Case Number AB16-001.

Originally, we submitted the abandonment application as part of a two-step process. First, we were asking the County to accept the dedication of Mil Drae Lane (APN 040-581-20). Second, once the County accepted the dedication, we would pursue an abandonment application. The letter received from Mr. Whitney indicates that the abandonment application is incomplete because of insufficient signed-owner affidavits. While we disagree that further owner signatures are required for the application as more fully described below, we maintain that the County can still accept the dedication of Mil Drae Lane during this appeal process.

A brief bit of history is necessary: Mil Drae Lane provides access to homes in the Mil Drae subdivision. At the time of this subdivision's final map recordation almost 40 years ago, there were seven abutting property owners to Mil Drae Lane. *See* Mil Drae Country Estates Subdivision Tract Map No. 1568 (Apr. 16, 1976) (hereinafter "1976 Final Map") (attached hereto as Exhibit 1). And at the time of the 1976 Final Map, the County rejected the dedication offer of Mil Drae Lane. *See id.* at County Commissioner's Certificate dated Apr. 15, 1976. The Board of County Commissioners, however, indicated that "[t]he offer of street dedication is hereby rejected *with the offer to remain open under NRS 278.390.*" *Id.* (emphasis added).

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<sup>1</sup> For purposes of the application and the appeal, "we" refers to the following property addresses, owners and parcel numbers as shown on the Mil Drae Lane Country Estates Subdivision Tract Map No. 1568: 460 Mil Drae Lane, Ryan M Dolan Trust, 040-582-02; ; 470 Mil Drae Lane, Roland G & Tina L Scarselli, 040-582-03; 490 Mil Drae Lane, Nunnally Family Trust, 040-582-04; 500 Mil Drae Lane, Ernaut Family Trust, 040-581-19; 510 Mil Drae Lane, Faulstich Family Trust 040-581-12; 515 Mil Drae Lane, Herbert & Susan Nichols Family Trust, 040-581-13; 495 Mil Drae Lane, Herbert & Susan Nichols Family Trust, 040-581-14.

Thus, under both the 1976 Final Map's language and the statute it references, the offer of dedication remains open today. To be clear, NRS 278.390<sup>2</sup> provides that, because rejected dedication offers remain open, counties may accept the dedication at a later time. Moreover, NRS 278.390 does not require *any* action by the subdivider (or any other party for that matter) to accept the dedication—the County may simply rescind its previous rejection and accept the street. Accordingly, though technically no action is required on our part, we are asking the County to accept the dedication of Mil Drae Lane by resolution and place this item on the next available agenda.

Second, we disagree that the Planning and Development Director's rejection of the abandonment application in this case. The abandonment requested here is remarkably similar to a previous abandonment within the same subdivision, AB07-005 Milabar Way (Allyene Way), and cited in our original Abandonment Case Number AB16-001 Application. There, a property owner situated east of a roadway sought abandonment of the roadway to expand his parcel size. The Washoe County Department of Community Development Staff noted that

[t]ypically abandonment of a roadway would require that the abandoned roadway would require that the abandoned roadway revert to the ownership of *both* of the abutting property owners equally. In this case, the parcel to the east of the roadway *was created by a different map* and did not dedicate land for the creation of the roadway originally so the entire roadway will revert to the property owner to the west.

Washoe Cty. Dep't of Cmty. Dev. Staff Report Analysis at 3, Washoe Cty. Planning Comm'n, Abandonment Case No. AB07-005 (Milabar Way) (May 25, 2007) (emphasis added) (attached as Exhibit 2). In other words, the County looks to the *original map* that created the dedication to determine the abutting property owners. Consequently, title would only revert to these abutting property owners.

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<sup>2</sup> NRS 278.390 provides that

[t]itle to property dedicated or accepted for streets and easements passes when the final map is recorded. *If at the time the final map is approved any streets are rejected, the offer of dedication shall be deemed to remain open and the governing body or planning commission may by resolution at any later date, and without further action by the subdivider, rescind its action and accept and open the streets for public use.* Such an acceptance must be recorded in the office of the county recorder and be so noted by the recorder on the subdivision plat, if the county recorder does not maintain a cumulative index for such plats and amendments. If such an index is maintained, the county recorder shall direct an appropriate entry for the acceptance or amendment.

(Emphasis added.)

Indeed, the County's conclusion in the Milabar abandonment is consistent with Nevada law. Under NRS 278.480(7):

The order [of abandonment] must be recorded in the office of the county recorder, if all the conditions of the order have been fulfilled, and upon the recordation, *title to the street or easement reverts to the abutting property owners in the approximate proportion that the property was dedicated by the abutting property owners or their predecessors in interest.*

Thus, upon abandonment, a property reverts back proportionately to the abutting property owners at the time of dedication.

Like the Milabar abandonment, the original map that provides the dedication must be consulted to determine the abutting property owners. Here, the 1976 Final Map that provided the dedication reveals the seven original abutting property owners: Parcel Numbers 040-582-02; 040-582-03; 040-582-04; 040-581-19; 040-581-12; 040-581-13; 040-581-14.<sup>3</sup> Affidavits from all of these owners were provided with the original abandonment application.<sup>4</sup> Thus, return of the application is inappropriate as the *only* parties that will have an interest in Mil Drae Lane after the abandonment are the property owners of the seven parcels on the original 1976 Final Map.

Moreover, the return of the abandonment application is also improper, as *any* abutting property owner can petition for abandonment. See NRS 278.480(1) ("Except as otherwise provided in subsections 11 and 12, *any abutting owner* or local government *desiring the vacation or abandonment of any street* or easement owned by a city or a county, or any portion thereof, shall file a petition in writing with the planning commission or the governing body having jurisdiction."). Thus, it was also improper for the return of the abandonment application here without an affidavit from *every* abutting property owner.

Based upon the above, we appeal the determination that the application in Abandonment Case No. AB16-001 is insufficient. First, we contend that the County may still proceed with the dedication. Second, the Planning and Development Director erred in concluding that signed owner affidavits from Mil Drae Lane's owners are required: because the County may accept the dedication at any time, signatures from all "owners" of the street is not necessary. And, importantly, affidavits from all abutting property owners as shown on the 1976 Final Map at the

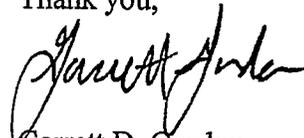
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<sup>3</sup> To be sure, because the County may accept the dedication offer at any time, the cited "ownership" of Mil Drae Lane that the County is concerned with is essentially irrelevant. Any alleged owner of Mil Drae Lane took title *subject to* the 1976 Final Map and is therefore on notice of potential dedication.

<sup>4</sup> As stated in the original application, easements will be granted to the three additional property owners within the subdivision.

time of dedication were included in the application. Lastly, because *any* abutting property owner can petition for abandonment, the return of the abandonment application here was improper.

Thank you,



Garrett D. Gordon  
Lewis Roca Rothgerber Christie LLP

GDG/ns

cc: Mr. William H. Whitney, Planning and Development Director  
Pete Ernaut  
Ryan M. Dolan  
James and Maureen Nunnally  
Roland and Tina Scarselli  
Lance Faulstich  
Herbert and Susan Nichols



Appellant Information (continued)	
Cite the specific outcome you are requesting under the appeal: Application should be submitted; County should proceed with accepting dedication of Mil Drae Lane	
State how you are an affected individual entitled to file this appeal: We represent the seven property owners that filed the initial abandonment application,	
Did you speak at the public hearing when this item was considered?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Did you submit written comments prior to the action on the item being appealed?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

For time limitations imposed for the various types of appeals, please refer to the Washoe County Development Code (WCC Chapter 110) and Nevada Revised Statutes Chapter 278 (NRS 278).

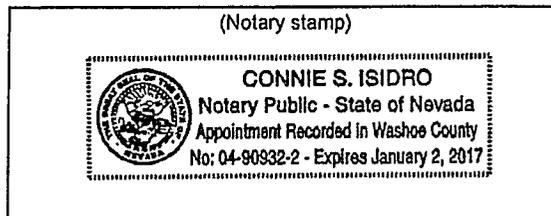
### APPELLANT AFFIDAVIT

STATE OF NEVADA )  
                                  )  
COUNTY OF WASHOE )

I, Garrett Gordon  
being duly sworn, depose and say that I am an appellant seeking the relief specified in this petition and that the foregoing statements and answers herein contained and the information herewith submitted are in all respects complete, true and correct to the best of my knowledge and belief. I understand that no assurance or guarantee can be given by staff of the Planning and Development.

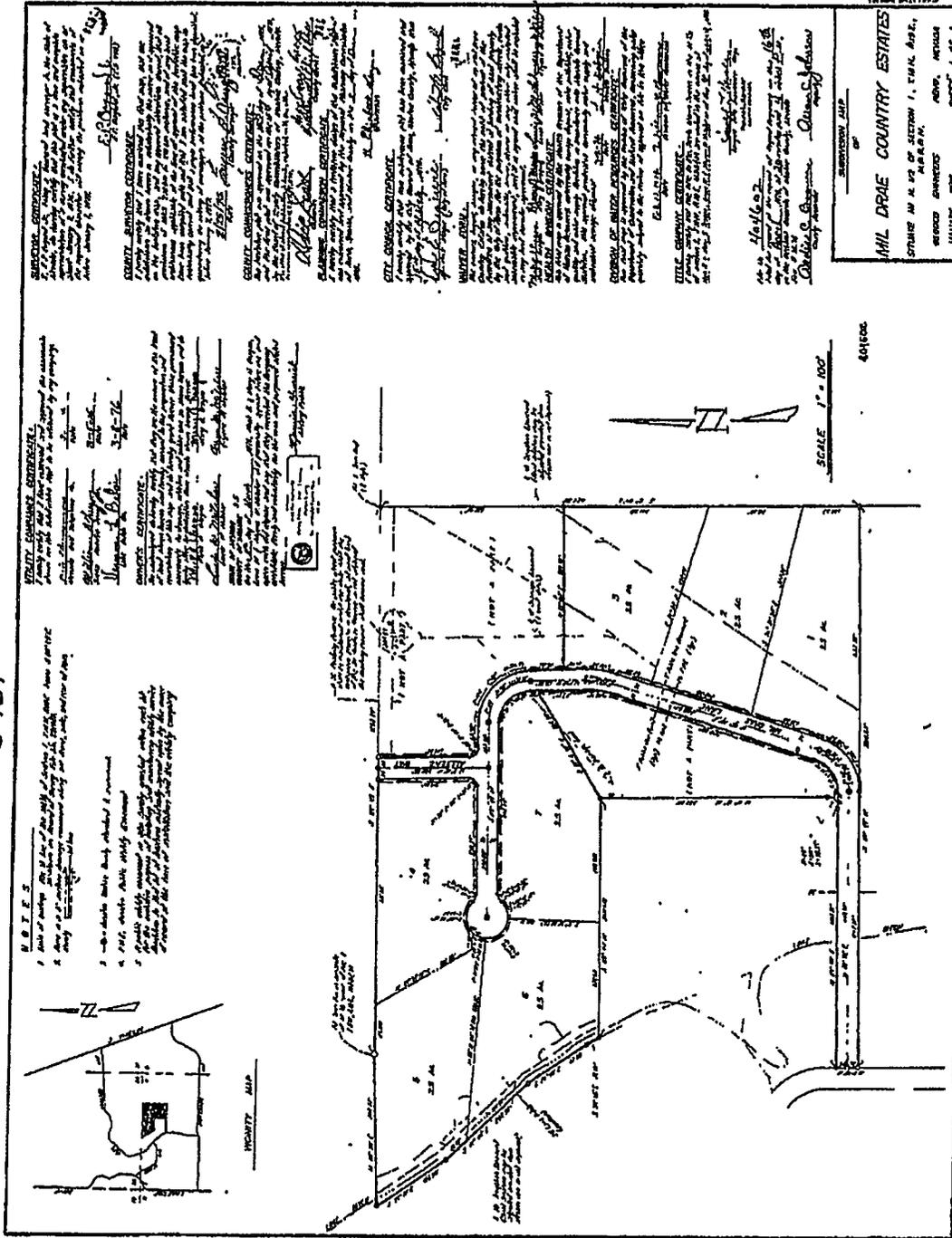
Signed *Garrett Gordon*  
Address \_\_\_\_\_

Subscribed and sworn to before me this  
24<sup>th</sup> day of March, 2016  
*Connie S. Isidro*  
Notary Public in and for said county and state  
My commission expires: Jan. 2, 2017



# EXHIBIT 1

1568



**PROPERTY OWNERS:**  
 1. [Name]  
 2. [Name]  
 3. [Name]  
 4. [Name]  
 5. [Name]

**DEEDS:**  
 1. [Reference]  
 2. [Reference]  
 3. [Reference]  
 4. [Reference]  
 5. [Reference]

**NOTES:**  
 1. [Text]  
 2. [Text]  
 3. [Text]  
 4. [Text]  
 5. [Text]

**GENERAL CONDITIONS:**  
 1. [Text]  
 2. [Text]  
 3. [Text]  
 4. [Text]  
 5. [Text]

**PLAT CONDITIONS:**  
 1. [Text]  
 2. [Text]  
 3. [Text]  
 4. [Text]  
 5. [Text]

**WATER DRAINAGE:**  
 1. [Text]  
 2. [Text]  
 3. [Text]

**UTILITIES:**  
 1. [Text]  
 2. [Text]  
 3. [Text]

**BOUNDARIES:**  
 1. [Text]  
 2. [Text]  
 3. [Text]

**ADJACENT PROPERTIES:**  
 1. [Text]  
 2. [Text]  
 3. [Text]

**MIL DRAE COUNTRY ESTATES**  
 STRAUS IN N. W. 1/4 OF SECTION 1, T. 14 N. R. 10 E.,  
 M. 10 S. 10 W.,  
 WISCONSIN  
 JANUARY 1958  
 SHEET 1 OF 1

**PREPARED BY:**  
 [Name]  
 [Address]  
 [City, State]

Subdivision - Tract Map # 1568

1568

## EXHIBIT 2



**Community Development**  
*"Dedicated to Excellence in Public Service"*  
 Adrian P. Freund, AICP, Community Development Director



Agenda Item No: **3-A** (06/05/2007)  
 Staff Recommendation: **NO RECOMMENDATION**

Agenda Item No: **3-B** (06/05/2007)  
 Staff Recommendation: **NO RECOMMENDATION**

**WASHOE COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT  
 STAFF REPORT**

**To:** Members of the Washoe County Planning Commission  
**Re:** Abandonment Case No. AB07-005 (MILABAR WAY)  
**Date:** May 25, 2007 **Prepared By:** Roger D. Pelham, Senior Planner

**GENERAL INFORMATION SUMMARY**

**Applicants:** Peter and Wendy Ernaut

**Requested Actions:**

A - To consider offer of dedication of a private right-of-way, approximately 50 feet wide and 233 feet long, as shown on Tract Map No. 1568, commonly known as Milabar Way (formerly known as Allyene Way) consisting of a portion of Assessor's Parcel Number 040-581-15, offered for dedication with the "Subdivision Map of Mil Drae County Estates" on April 16, 1976, and to consider executing a resolution accepting Dedication;

And, if approved,

B - To abandon the right-of-way, approximately 50 feet wide and 233 feet long, as shown on Tract Map No. 1568, commonly known as Milabar Way (formerly known as Allyene Way), consisting of a portion of Assessor's Parcel Number 040-581-15, offered for dedication with the "Subdivision Map of Mil Drae County Estates" on April 16, 1976. Abandonments are authorized pursuant to Article 806 of the Washoe County Development Code.

Milabar Way is a "stub street" located to the north side of Mil Drae Lane, approximately 1/3 mile north of the intersection of Mil Drae Lane and Del Monte Lane. The ±2.55 acre parcel is designated High Density Rural (HDR) in the Southwest Truckee Meadows Area Plan, is within the NE4 of Section 1, T18N, R19E, MDM, Washoe County, Nevada. The abandonment application is within the boundaries of the Southwest Truckee Meadows Citizen Advisory Board, but not subject to its review; and is in Washoe County Commission District No. 2. (APN 040-581-15)

To: Washoe County Planning Commission  
Re: AB07-005 Milabar Way, Peter and Wendy Ernaut  
Date: May 25, 2007  
Page: 2

**RECOMMENDATION / FINDINGS**

Should the Planning Commission determine that it is appropriate to execute a resolution accepting Milabar Way for the purposes of abandonment only the following motion may be utilized:

*I move that the Washoe County Planning Commission accept and execute the resolution attached to Abandonment Case No. AB07-005, for the purpose of immediate abandonment of the right of way only.*

Should the Planning Commission determine that it is not appropriate to execute a resolution accepting Milabar Way for the purposes of abandonment only the following motion may be utilized:

*I move that the Washoe County Planning Commission not accept the resolution attached to Abandonment Case No. AB07-005. The offer of dedication as indicated on the "Subdivision Map of Mil Drae County Estates" dated April 16, 1976, shall remain rejected at this time but shall remain open under NRS 278.390.*

**RECOMMENDATION/FINDINGS**

Staff recommends neither approval nor denial of the request and recommends that the Planning Commission hold a public hearing to allow other interested parties who may have an interest in the use of Milabar Way, now or in the future, to express their wishes and concerns to the Commission.

Should the Planning Commission determine that the abandonment request is appropriate, having already executed the attached resolution accepting Milabar Way, the following motion has been provided for your consideration:

I move that the Washoe County Planning Commission conditionally approve the vacation of the portion of Assessors Parcel Number 040-581-15 that is approximately 50 feet wide and 233 feet long, as shown on Tract Map No. 1568, commonly known as Milabar Way for Abandonment Case No. AB07-005 having made the findings:

1. That the abandonment request is not inconsistent with the land use map and policies of the Southwest Truckee Meadows Area Plan;
2. That the public will not be materially injured by the proposed vacation;
3. That any other existing easements in the area are not affected by the proposed vacation; and
4. That the Commissioners gave reasoned consideration to the information contained within the staff report and information received during the meeting.

To: Washoe County Planning Commission  
Re: AB07-005 Milabar Way, Peter and Wendy Ernaut  
Date: May 25, 2007  
Page: 3

## LAND USE SUMMARY

**Land Use Designation:**

High Density Rural (HDR).

**Area Plan Modifiers:**

None Applicable.

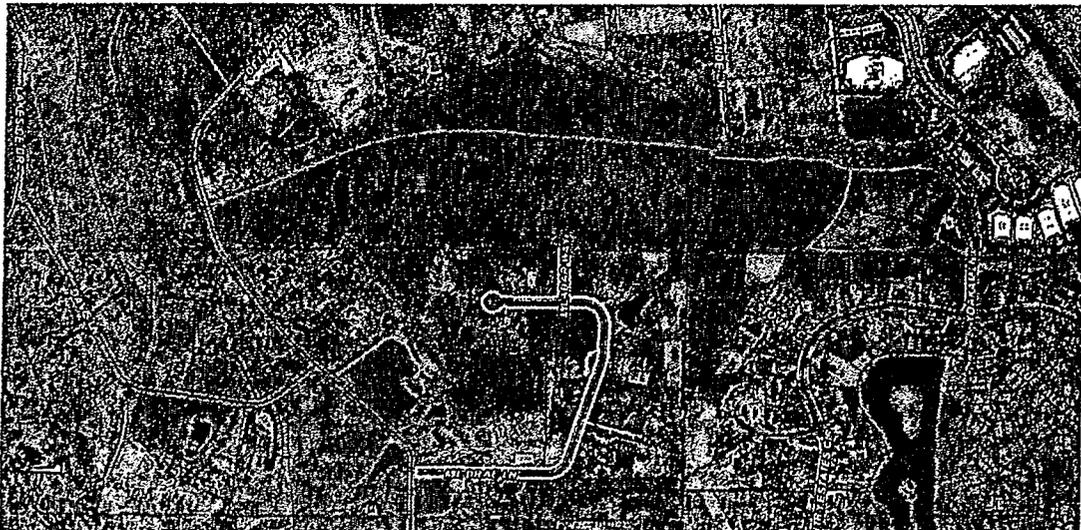
**Development Suitability Constraints:**

None.

## ANALYSIS

This abandonment request would relinquish a private right-of-way, approximately 50 feet wide and 233 feet long, as shown on Tract Map No. 1568, commonly known as Milabar Way (formerly known as Allyene Way) consisting of a portion of Assessor's Parcel Number 040-581-15, to the abutting property owners Pete and Wendy Ernaut. Typically abandonment of a roadway would require that the abandoned roadway revert to the ownership of both of the abutting property owners equally. In this case the parcel to the east of the roadway was created by a different map and did not dedicate land for the creation of the roadway originally so the entire roadway will revert to the property owner to the west, the Ernauts. The result of the abandonment would be an increase in the Ernaut's parcel by approximately 11,915 square feet resulting in a parcel approximately 2.75 acres in size.

Milabar Way is a private roadway "stub" between Mil Drae Lane and the southern border of Anderson Park, as can be seen on the photo below.





To: Washoe County Planning Commission  
Re: AB07-005 Milabar Way, Peter and Wendy Ernaut  
Date: May 25, 2007  
Page: 5

<b>CONDITIONS for ABANDONMENT CASE NO. AB07-005</b>
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(As provided by Department of Community Development and attached to Staff Report dated May 25, 2007)

**\*\*\* IMPORTANT -- PLEASE READ \*\*\***

**A COPY OF ALL AGREEMENTS, EASEMENTS, OR OTHER DOCUMENTATION REQUIRED BY THESE CONDITIONS SHALL BE FILED WITH THE DEPARTMENT OF PUBLIC WORKS AND/OR DEPARTMENT OF COMMUNITY DEVELOPMENT.**

**FOR THE PURPOSES OF CONDITIONS IMPOSED BY WASHOE COUNTY, "MAY" IS PERMISSIVE AND "SHALL" OR "MUST" IS MANDATORY.**

**COMPLETION OF THE FOLLOWING CONDITIONS SHALL BE DETERMINED BY THE COUNTY ENGINEER, PRIOR TO RECORDATION OF THE ORDER OF ABANDONMENT.**

1. Prior to recordation of the Order of Abandonment, the applicant must submit to the County Engineer for review and approval legal descriptions prepared by a registered professional for the area of abandonment.
2. Retention of all public utility easements or relocations of all public utility easements to the satisfaction of and at no expense to Washoe County or the existing public utilities that originally accepted and approves said easement as well as any other public utilities now in existence that currently utilize said easements. Said relocations shall be evidenced by recordation of properly executed documents reflecting the grant of the new easements (if required) to said public utilities and relinquishment of said public utilities of their former easements.
3. The applicant shall comply with all conditions necessary to effect the Resolution and Order of Abandonment within two years from the date of the action by the Planning Commission or this conditional abandonment will be null and void.
4. Should the applicants fail to complete the Order of Abandonment within two years from the date of action of Washoe County, the acceptance of the easement by Washoe County shall become null and void.

**\*\* END OF CONDITIONS \*\***



# Community Development

*"Dedicated to Excellence in Public Service"*

Adrian P. Freund, AICP, Community Development Director



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Post Office Box 11130, Reno, NV 89520-0027 – 1001 E. Ninth St., Reno, NV 89512  
Telephone: 775.328.3600 – Fax: 775.328.3648  
[www.washoecounty.us/comdev/](http://www.washoecounty.us/comdev/)

***"Your Community Development Department"***

INSTRUCTIONS ONLY. DO NOT INCLUDE WITH APPLICATION SUBMITTAL.

**Appeal of Decision  
Development Application Submittal Requirements**

1. **Fees:** See fee sheet included in application packet.
  2. **Development Application:** A completed Washoe County Appeal of Decision Application form.
  3. **Appellant Affidavit:** The Appellant Affidavit must be signed and notarized.
  4. **Application Materials:** The completed Appeal of Decision Application materials.
  5. **Packets:** Either one electronic packet (DVD or flash drive) with 2 paper copies **OR** 10 paper copies. **If packet on DVD or flash drive is incomplete, a replacement or additional paper copies will be required.**
-



**WASHOE COUNTY**  
**Planning and Development**  
INTEGRITY COMMUNICATION SERVICE

Community Services Dept.  
P.O. Box 11130  
Reno, Nevada 89520-0027  
Phone: (775) 328-6100  
Fax: (775) 328-6133

**Board of Adjustment Action Order**

**Appeal of Administrative Decision Case Number AX16-002**

Decision: Denial

Decision Date: June 2, 2016

Mailing/Filing Date: June 7, 2016

Appellants: Peter Ernaut  
Ryan M. Dolan  
James and Maureen Nunnally  
Roland and Tina Scarselli  
Lance Faulstich  
Herbert and Susan Nichols

Assigned Planner: Trevor Lloyd, Senior Planner  
Washoe County Community Services Department  
Planning and Development Division  
775.328.3620  
tlloyd@washoecounty.us

Phone: 775.328.3620  
E-Mail: tlloyd@washoecounty.us

**Appeal of Administrative Decision Case Number AX16-002 (Mil Drae Lane)** – Hearing, discussion, and possible action on an appeal to reverse an administrative decision by the Director of the Planning and Development Division to reject an application to abandon the privately owned roadway Mil Drae Lane for being incomplete.

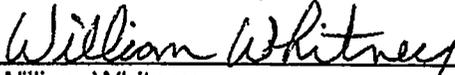
- Appellant’s Counsel: Lewis, Roca, Rothgerber, Christie, LLP  
Attn: Garrett Gordon
- Location: Mil Drae Lane, approximately 1,500 feet north of the intersection of Huffaker and Del Monte
- Assessor’s Parcel Number: 040-581-20
- Parcel Size: 2.523 acres
- Master Plan Category: Rural Residential (RR)
- Regulatory Zone: High Density Rural (HDR)
- Area Plan: Southwest Truckee Meadows
- Citizen Advisory Board: South Truckee Meadows/Washoe Valley
- Development Code: Authorized in Article 806, Vacations and Abandonments of Easements or Streets
- Commission District: 2 – Commissioner Lucey
- Section/Township/Range: Section 1, T18N, R19E, MDM, Washoe County, NV

Notice is hereby given that the Washoe County Board of Adjustment denied the above referenced case number based on the inability to submit the complete requirements for application required by Washoe County Development Code Section 110. 806.05.

To: Mil Drae Lane  
Subject: Appeal of Administrative Decision Case Number AX16-002  
Date: June 7, 2016  
Page: 2

Anyone wishing to appeal this decision to the Washoe County Board of County Commissioners may do so within 10 calendar days after the Mailing/Filing Date shown on this Action Order. To be informed of the appeal procedure, call the Planning staff at **775.328.6100**. Appeals must be filed in accordance with Section 110.912.20 of the Washoe County Development Code.

Washoe County Community Services Department  
Planning and Development Division

  
\_\_\_\_\_  
William Whitney  
Secretary to the Board of Adjustment

WW/TL/df

Appellants: Pete Ernaut, 500 Mil Drae Ln, Reno, NV 89511  
Ryan M. Dolan, 460 Mil Drae Ln, Reno, NV 89511  
James and Maureen Nunnally, 490 Mil Drae Ln, Reno, NV 89511  
Roland and Tina Scarselli, 470 Mil Drae Ln, Reno, NV 89511  
Lance Faulstich, 510 Mil Drae Ln, Reno, NV 89511  
Herbert and Susan Nichols, 495 Mil Drae Ln, Reno, NV 89511

Appellant's Counsel: Lewis, Roca, Rothgerber, Christie; LLP  
Attn: Garrett Gordon  
50 W. Liberty Street #410  
Reno, NV 89501



# Board of Adjustment Staff Report

Meeting Date: June 2, 2016

**Subject:** Appeal of Administrative Decision Case Number AX16-002  
**Appellant(s):** Garrett Gordon, Lewis, Roca, Rothgerber, Christie, LLP  
**Agenda Item Number:** 8E  
**Project Summary:** Appeal of the administrative decision by the Director of the Planning and Development Division to reject an abandonment application for Mil Drae Lane  
**Recommendation:** Denial  
**Prepared by:** Trevor Lloyd, Senior Planner  
Planning and Development Division  
Washoe County Community Services Department  
**Phone:** 775.328.3620  
**E-Mail:** tlloyd@washoecounty.us

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## Description

**Appeal of Administrative Decision Case Number AX16-002 (Mil Drae Lane)** – Hearing, discussion, and possible action on an appeal to reverse an administrative decision by the Director of the Planning and Development Division to reject an application to abandon the privately owned roadway Mil Drae Lane for being incomplete.

- **Appellant:** Lewis, Roca, Rothgerber, Christie, LLP  
Attn: Garrett Gordon
- **Location:** Mil Drae Lane, approximately 1,500 feet north of the intersection of Huffaker and Del Monte
- **Assessor's Parcel Number:** 040-581-20
- **Parcel Size:** 2.523 acres
- **Master Plan Category:** Rural Residential (RR)
- **Regulatory Zone:** High Density Rural (HDR)
- **Area Plan:** Southwest Truckee Meadows
- **Citizen Advisory Board:** South Truckee Meadows/Washoe Valley
- **Development Code:** Authorized in Article 806, Vacations and Abandonments of Easements or Streets
- **Commission District:** 2 – Commissioner Lucey
- **Section/Township/Range:** Section 1, T18N, R19E, MDM, Washoe County, NV

**Staff Report Contents**

Description..... **Error! Bookmark not defined.**  
Background..... 3  
Recommendation..... 3  
Motion..... 4  
Appeal Process..... 4

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**Exhibits Contents**

Appeal Letter dated March 24, 2016 and appeal materials ..... Exhibit A  
Incomplete Application Letter from Washoe County ..... Exhibit B

## **Background**

On February 16, 2016, the firm of Lewis, Roca, Rothgerber, Christie, LLP, on behalf of several property owners, submitted an application to abandon a 2.523 acre property identified as Mil Drae Lane, which is used as a roadway/access for up to 13 parcels.

The abandonment application involved a two part request. The first part of the request asked Washoe County to accept an offer of dedication for the subject property - Mil Drae Lane. The second part of the request involved Washoe County abandoning Mil Drae Lane immediately after accepting the dedication. The abandonment application requested that Mil Drae Lane be abandoned to the following seven abutting properties/owners:

- 1) Ryan M. Dolan Family Trust (APN 040-582-02)
- 2) Roland and Tina Scarselli (APN 040-582-03)
- 3) Nunnally Family Trust (APN 040-582-04)
- 4) Ernaut Family Trust (APN 040-581-19)
- 5) Faulstich Family Trust (APN 040-581-12)
- 6) Herbert and Susan H Family Trust (APN 040-581-13)
- 7) Herbert and Susan H Family Trust (APN 040-581-14)

As to the abandonment request, Nevada law generally allows any property owner to file a petition for the abandonment of any street or easement owned by the city or county. The local government is empowered to create a procedure for the processing of abandonment requests. Once a valid request is filed, the matter is set for a hearing and the local government can abandon the property if it determines the public will not be materially injured by the proposed abandonment.

As to the request to accept the offer of dedication for the roadway itself, when a final subdivision map is filed, Washoe County generally must accept or reject all offers of dedication in the map. If rejected, however, the County can rescind its rejection at any time and accept the offer of dedication by action of the Planning Commission or governing body per NRS 278.390. To date, Washoe County has not accepted the offer of dedication for Mil Drae Lane and it is currently held in private ownership.

The Director of the Washoe County Planning and Development Division rejected the abandonment application due to insufficient submittal requirements. Specifically, the application did not contain the required signed owner affidavits for the property subject to the abandonment request. Washoe County Code (WCC) Section 110.806.10 enables the Director to prepare supplemental guidelines for the submission of applications for abandonments. Submittal requirement number 3, of the Abandonment Development Application Submittal Requirements sheet, states that *"the Owner Affidavit must be signed and notarized by all owners of the property subject to the application request."* The owners of record, as specified by the Washoe County Assessor's records, differ greatly from the owners identified within the application. As shown below, the names of the signed owner affidavits (numbered 1 to 7 above) differ greatly from the official ownership records provided by the Washoe County Assessor's Office. The Assessor's Office lists Mil Drae Lane (APN: 040-581-20) under the following ownership:

- 1) Ernaut Family Trust (appears on the signed affidavit)
- 2) Darrell Bennett
- 3) Wilma Bennett
- 4) Timothy and Marsha Grant
- 5) Herbert and Susan Nichols Family Trust (appears on the signed affidavit)
- 6) Robert and Jerrady Hawkins

- 7) Larry D. Klaich Family Trust
- 8) William and Sally Burrows
- 9) William and Catherine Lore
- 10) Allyene Milabar

WCC Section 110.806.05 states "No application shall be processed when the information necessary to review and decide upon it is deemed incomplete by the Director." Therefore, the Director of the Planning and Development Division has rejected the application as incomplete (see Exhibit B).

In their appeal, the appellants contend that owner affidavits are not necessary because the application was submitted as a two-step process and there is an existing offer of dedication for Mil Drae Lane and that Washoe County has the authority to accept the offer of dedication without the owner affidavits. The appellants also contend that a similar abandonment was approved on a short roadway off of Mil Drae Lane, known as Milabar Way several years ago, and that any abutting property owner can petition Washoe County for such an abandonment. See Exhibit A for the complete letter and materials for this appeal.

Staff does not agree with the appellants' contention that the owner affidavits are not necessary. Even though there is an offer of dedication for Mil Drae Lane, Washoe County has not accepted that offer of dedication. At this time, the property is privately owned and Washoe County cannot proceed with a discretionary permit application without the written approval of all required owners of the property for the proposed action (i.e., the abandonment).

Per WCC Section 110.912.10, the Board may reverse, modify or remand a decision (of the Planning Director) if the decision:

- (a) Was made contrary to the constitution, a statute, an ordinance, or regulation, or the law of the case;
- (b) Exceeds the jurisdiction or statutory authority of the deciding official or body;
- (c) Was made on unlawful procedure;
- (d) Is affected by an erroneous interpretation or other error of law;
- (e) Is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) Is arbitrary or capricious or characterized by abuse of discretion

### **Recommendation**

After a thorough analysis and review, Appeal Case Number AX16-002 is being recommended for denial. Staff offers the following motion for the Board's consideration.

### **Motion**

I move that, after giving reasoned consideration to the information contained in the staff report and information received during the public hearing, the Washoe County Board of Adjustment deny Appeal Case Number AX16-002 for Lewis, Roca, Rothgerber, Christie LLP and affirm the decision by the Director of the Planning and Development Division to reject an application to abandon the privately owned roadway, Mil Drae Lane.

**Appeal Process**

Board of Adjustment action will be effective 10 calendar days after the written decision is filed with the Secretary to the Board of Adjustment and mailed to the original applicant, unless the action is appealed to the Washoe County Board of County Commissioners, in which case the outcome of the appeal shall be determined by the Washoe County Board of County Commissioners. Any appeal must be filed in writing with the Planning and Development Division within 10 calendar days after the written decision is filed with the Secretary to the Board of Adjustment and mailed to the original applicant.

xc: Appellant:            Lewis, Roca, Rothgerber, Christie; LLP  
                                  Attn: Garrett Gordon  
                                  50 W. Liberty Street #410  
                                  Reno, NV 89501

Other Contacts:    Pete Ernaut, 500 Mil Drae Ln, Reno, NV 89511  
                                  Ryan M. Dolan, 460 Mil Drae Ln, Reno, NV 89511  
                                  James and Maureen Nunnally, 490 Mil Drae Ln, Reno, NV 89511  
                                  Roland and Tina Scarselli, 470 Mil Drae Ln, Reno, NV 89511  
                                  Lance Faulstich, 510 Mil Drae Ln, Reno, NV 89511  
                                  Herbert and Susan Nichols, 495 Mil Drae Ln, Reno, NV 89511



# WASHOE COUNTY BOARD OF ADJUSTMENT DRAFT Meeting Minutes

## Board of Adjustment Members

Lee Lawrence, Chair  
Kim Toulouse, Vice Chair  
Kristina Hill  
Brad Stanley  
Clay Thomas  
William Whitney, Secretary

Thursday, June 2, 2016  
1:30 p.m.

Washoe County Administration Complex  
Commission Chambers  
1001 East Ninth Street  
Reno, NV

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The Washoe County Board of Adjustment met in regular session on Thursday, June 2, 2016, in the Washoe County Administrative Complex Commission Chambers, 1001 East Ninth Street, Reno, Nevada.

### 1. \*Determination of Quorum

Chair Lawrence called the meeting to order at 1:35 p.m. The following members and staff were present:

Members present: Lee Lawrence, Chair  
Kristina Hill  
Brad Stanley  
Clay Thomas

Members absent: Kim Toulouse

Staff present: Lora R. Robb, Planner, Planning and Development  
Eric Young, Senior Planner, Planning and Development  
Trevor Lloyd, Senior Planner, Planning and Development  
William H. Whitney, Director, Planning and Development  
Nathan Edwards, Deputy District Attorney, District Attorney's Office  
Donna Fagan, Recording Secretary, Planning and Development

### 2. \*Pledge of Allegiance

Chair Lawrence led the pledge to the flag.

### 3. \*Ethics Law Announcement

Deputy District Attorney Edwards recited the Ethics Law standards.

### 4. \*Appeal Procedure

Mr. Whitney recited the appeal procedure for items heard before the Board of Adjustment.

### 5. \*Public Comment

As there was no response to the call for public comment, Chair Lawrence closed the public comment period.

## 6. Possible action to approval Agenda

In accordance with the Open Meeting Law, Member Stanley moved to approve the agenda of June 2, 2016. The motion, seconded by Member Hill, passed four in favor and none opposed.

## 7. Possible action to approve April 7, 2016 Draft Minutes

Member Hill moved to approve the minutes of April 7, 2016, as written. The motion was seconded by Member Stanley and passed four in favor, none opposed.

## 8. Public Hearings

### E. Appeal of Administrative Decision Case Number AX16-002 (Mil Drae Lane) – Hearing, discussion, and possible action on an appeal to reverse an administrative decision by the Director of the Planning and Development Division to reject an application to abandon the privately owned roadway Mil Drae Lane for being incomplete.

- Appellant: Lewis, Roca, Rothgerber, Christie, LLP  
Attn: Garrett Gordon
- Location: Mil Drae Lane, approximately 1,500 feet north of the intersection of Huffaker and Del Monte
- Assessor's Parcel Number: 040-581-20
- Parcel Size: 2.523 acres
- Master Plan Category: Rural Residential (RR)
- Regulatory Zone: High Density Rural (HDR)
- Area Plan: Southwest Truckee Meadows
- Citizen Advisory Board: South Truckee Meadows/Washoe Valley
- Development Code: Authorized in Article 806, Vacations and Abandonments of Easements or Streets
- Commission District: 2 – Commissioner Lucey
- Section/Township/Range: Section 1, T18N, R19E, MDM, Washoe County, NV
- Staff: Trevor Lloyd, Senior Planner  
Washoe County Community Services Department  
Planning and Development Division
- Phone: 775.328.3620
- Email: [tlloyd@washoecounty.us](mailto:tlloyd@washoecounty.us)

Member Stanley disclosed he had a long term real estate business relationship with one of the families of the appellants in this case which may continue in the future. He asked DDA Edwards for advice in this matter. DDA Edwards asked if the business venture Member Stanley is involved in is in Washoe County. Member Stanley said yes and disclosed it is with the Dolan family and has nothing to do with this application. DDA Edwards noted Member Stanley does not have a direct pecuniary interest in the project because the real estate venture Member Stanley is involved in with the Dolan's is not this project. But there is the potential of an indirect pecuniary interest, in that, an objective outsider might view this as a scenario where one business partner would feel pressure to act favorably toward another business partner to preserve their working business relationship in the other matter. Then the commitment of private capacity issue has come up in some of the ethics commission cases hearings where they talk about business relationships which are in the scope of that provision in NRS 281.80.420 so those are matters that appear to come within the scope of that statute. The question is would it materially affect your independence of judgement of a reasonable person. It is not a subject of standard, meaning, even though you may be an upstanding guy and it may

not affect your independence of judgement, the question is not whether subjectively that is the case it is whether an objective person would perceive that as an impairment of your independence of judgement. DDA Edwards stated Member Stanley's inclination is to recuse himself from this case having made this disclosure and he believes there are grounds for Member Stanley to recuse himself, under the statute. Legally he feels there is a basis for Member Stanley to do that, in this situation. DDA Edwards advised Member Stanley to not participate at all in the matter and exit the room until the matter is over. DDA Edwards wanted to make it clear there is no accusation of wrong doing with respect to this it is simply a matter of following the rules and ethics code that are meant to provide impartiality for applicants in adjudicated matters, such as is happening here today. DDA Edwards also stated, under NRS 281(a) 420.5, if you are abstaining because of the requirements of that section the quorum to act is reduced as though that person were not a member of the Board. Meaning, of the remaining three Members, two constitute a majority.

**3:11 p.m.** – Member Stanley left the Board and Chambers.

Chair Lawrence opened the public hearing. Mr. Lloyd reviewed his staff report dated May 12, 2016. Mr. Lloyd noted the applicant requests to amend the appellants to reflect those seven owners who signed the affidavits not the attorney who submitted the appeal.

Chair Lawrence asked Mr. Lloyd for clarification on abandoning a road and the logic behind it. Mr. Lloyd deferred the question to Garrett Gordon, attorney for the appellants.

DDA Edwards advised the Board the question before them is not whether the abandonment is a good or bad idea, what affects it may have, etc. What they are here to decide is whether or not to uphold the Director's decision to reject the application for being incomplete.

Mr. Gordon, representing the Ernaut family, the Dolan family, the Nunnally family, the Scarselli family, the Faulstich family, and the Nichols family, displayed the original parcel map that was approved in 1976. It created seven parcels along with a parcel being Mil Drae Lane with a stub called Mili Bar Way. There was a notation on the map, when it went to the BCC, but an offer of dedication of the road to the County was rejected because it wasn't up to County standards, which is typical, but the offer remained open, so, the County at any time could accept dedication. With that was a set of CC&R's, recorded in 1976. Mr. Nichols' name is in the CC&R's as one of the architectural representatives. The CC&R's do a number of things that commit to the seven property owners; only single family residences, certain setbacks, trailers/ancillary structures prohibited, things Mr. Nichols and his neighbors bought here knowing how the community would be developed. Subsequently, there was a second set of CC&R's which added three more properties now creating the Mil Drae subdivision containing ten properties. The supplemental CC&R's also had maintenance obligations of Mil Drae Lane. Every April the ten property owners would divide up assessments; repairing the road, snow removal, and taxes. It is a private road. Currently, we have Washoe County Parcel Map, showing Mil Drae Country Estates identifying the original seven property owners plus the three. Mr. Gordon noted two additional parcels, the Bennett parcels, along the south side of Mil Drae Lane. They are not included in the original map and not included in the CC&R's, they have no ownership to the road, have never contributed to the maintenance of the road, and never used the road. A couple of years ago, the Dolan family saw a For Sale sign on the back southeastern parcel next to theirs and noted the parcel has Del Monte access, they're not part of our subdivision, maybe they should buy the property and expand. The Dolan's called their realtor and during conversation found out the property for sale had access via Mil Drae Lane. Mr. Dolan called Mr. Nichols and Mr. Ernaut to ask them how the property for sale had access by Mil Drae Lane as it wasn't mentioned in the CC&Rs, noted on the map and the seven property owners never granted them access. The property owners did research and found, in 2009, a boundary line adjustment (BLA) was approved by the County and moved the boundary line which created the back parcel. Now the property owners are thinking the back parcel was

created to sell on the backs of the ten property owners who have been using the road for all these years and asking how the BLA was approved. Mr. Gordon went to the assessor's website and both parcels show a Del Monte access. He went to the County surveyor to find out how the back parcel was approved with Mil Drae access when they had no legal right to it. Mr. Gordon read portions of an email from the County surveyor to Terrance Shay, a previous DA, ... "Mr. Gordon called me wondering how this map was approved...two adjacent parcels not part of TM1568, 040-582-11 and 040-582-12 are not part of this map, have access to Del Monte Lane but both were directly adjacent to Mil Drae Lane." "In 2009 both of these parcels were identified on a record of survey where the rear parcel no longer has access to Del Monte. The adjustment of the boundary lines were approved by Washoe County knowing the rear parcel was losing access to Del Monte Lane but still had access from Mil Drae Lane. At the time it seemed there was opposition from the other owners. I believe the other owners have a roadway maintenance agreement that the two parcels are not part of. Please advise us how to respond." So, statute in 1979 said if you want to have a private road in the subdivision you have to show it on the map. Referring to the original map, the road does not say "private road". Maybe there is a problem here. However the original map was recorded in 1976, the statute came in 1979. There wasn't a requirement to add the designation in 1976. Mr. Gordon wrote a letter to Mr. Shay noting that and said if the BLA was approved giving a back lot it was approved under that statute, that map needs to be rescinded as it is inaccurate. Mr. Gordon read Mr. Shay's letter responding to his letter. Now Mr. Gordon has ten property owners asking how the BLA was approved with no legal access. The map should be rescinded they don't have access to our road. In the meantime, Mr. Gordon received an email from the Bennett's lawyer saying they tracked down one of the original developers who signed the map, Milibar and Dragoo, and they quit-claimed the Bennett's 15% of road. Now they own part of our road? We got together to figure out how they could protect these ten people interest in the road. What was mentioned was; do what we did with the stub street Mili Bar Way when Mr. Ernaut wanted to abandon Mili Bar Way and add it to his property. They filed an application, like the one before the Board today, and asked the County to accept the road under the open dedication offer along with abandoning it to Mr. Ernaut. At that time the County asked what signatures they need and what was concluded; under state law any abutting property owner can request an abandonment and a dedication doesn't require any owner affidavits. Anyone can do it. Once the County accepts dedication there is no owner. Washoe County is the owner. In the Milibar Way request only Mr. Ernaut's affidavit was accepted. Under law, when you abandon a parcel, in some cases it goes to the adjoining parcels but in the Milibar Way case it goes to the properties under the original map who dedicated it. Mr. Gordon said when he filed the abandonment application he only had the original seven property owners sign the application knowing no one who had to sign the application for a dedication which they are asking the County Commission to do. In the application, Mr. Gordon acknowledged the other three property owners who were not part of the original application but had been subject to the CC&Rs. They are going to grant everyone in the community easements. Mr. Gordon filed the application and staff said it wasn't complete. He objects as staff relied upon, attached to their denial, an assessor's website page listing the owners. The Ernaut Family Trust owns an easement to the road. They're not an owner. How can you require an affidavit from an easement holder. Timothy and Marsha Grant, they don't own the property any more. Any title company would say you shouldn't rely upon the assessor's webpage. There are no guarantees they are right. The Lore's, who they require to sign, also owns an easement. That's why Mr. Gordon believes the state law is correct in that you only need a request from one abutting property owner and everyone receives notice so they can come in and comment. The precedent we are going to set of who has to sign is based on the Washoe County assessor's printouts it's going to be incorrect. Now Washoe County is going to have to do a series of title searches. Mr. Gordon noted the findings the Board could make to reverse the decision; the County's decision was contrary to the constitution, a statute, or ordinance. Yes, state law allows one signature and it's contrary to the ordinance Mr. Lloyd quoted regarding who's subject to this application. Dedication requires zero signatures. Once the dedication is approved the County owns it. It's clearly erroneous based on the record of

Milibar Way. The County accepted one signature, it was processed. Anyone can ask the BCC to deny an abandonment or to condition it. Mr. Gordon believes they need the same precedent with this application. He believes it is arbitrary and capricious to rely upon a list on the assessor's website and to vary from a precedent on Milibar Way. Mr. Gordon wants to make clear his clients are trying to be 100% reasonable when saying, if they want to be subject to the CC&Rs they can come in and live under the same rules we do if they want to be part of our road. The second set of CC&Rs says here is the process to be part of payment for the road which they would have to commit to. He is asking the Board to deem the application complete based on the signatures of these seven property owners.

Member Thomas asked Mr. Gordon if it was correct the County hasn't accepted dedication of Mil Drae Lane, yet. Mr. Gordon said that is correct. Member Thomas asked, if the County hasn't accepted ownership how they can someone file for an abandonment. Mr. Gordon said just as they did in 2008 with the request to abandon Milibar Way. We asked the Planning Commission to accept dedication then to abandon followed by approval from the BCC. There is no process for asking for acceptance of dedication. Member Thomas asked if, back in the early 70's, the road was not classified as a private road. Mr. Gordon said correct. In 1976, the road was approved and given its own parcel number and attempted to be dedicated to the County and the County said no. The property owners over the last 40 years believed they legally owned the property, maintained and paid the taxes on it. Member Thomas asked if it was not identified as a private road what would prevent the Bennett's from using the road. Mr. Gordon said it was 100% private and they made the assertion in order to make it private it had to say that on the map. Mr. Gordon said no they didn't because it wasn't a requirement when this map was created. When they abandoned Milibar Way, once the statute was created, it gave them an opportunity to put something else on the record so "private roadway" was added, complying with the statute. The Bennett's, with their BLA relied on the notation map, which wasn't a requirement, does not give them legal access to that BLA.

Member Hill stated she understands the request requires owner affidavits from the owners that abutt the road and it doesn't seem like Mr. Gordon has provided that. She asked if the first list mentioned in the staff report contained the owners on the road. Mr. Gordon argued that staff is not requiring owner affidavits from all the adjacent properties. They're saying, because the road is an APN, who owns the road should be filing owner affidavits and we're saying their relying upon the assessor's property information is incorrect. These people don't own the road anymore and some of them on the list only have an easement so to comply with staff we'd have to run a title report. Member Hill asked Mr. Gordon if he ran a title report to find out who owns the road. Mr. Gordon said he has a title and knows who owns the road and the fact is it's a complete mess. Member Hill asked who the title report says owns the road. Mr. Gordon replied he would go through it. Of the ten property owners six or seven have easements the other three or four were granted one tenth interest. So, it's confusing as to who owns the road. Milibar Way was approved with one owner affidavit. Member Hill referred to the staff report and asked when the County said they needed the owner affidavits from the additional people, these are the property owners adjacent to the road, is that true. Mr. Gordon said correct, and how we got to that analysis was the same analysis for Milibar Way. Step One: State law says one abutting property owner. Step Two: the first request was a dedication anyone could make so we don't even get to Step Two until we get through Step One. Member Hill asked what the problem was in getting the ten owner affidavits. Mr. Gordon said, from these ten property owners? No problem. We have seven I can go get three more. Member Hill confirmed that would be the list of ten of the actual owners. Mr. Gordon said it's different than what they identified because, for example; the Grants sold their property to someone else, the Hawkins sold their property. But, if you approve a request today on the condition that we go get seven of them we would need three more, Klaich, Lore, and one more. That's no problem, we'll happily do that. Member Hill reiterated Mr. Gordon's comment that he would be happy to provide owner affidavits from all the people abutting the road. Mr. Gordon said no, all the people who are part of the Mil Drae Country Estates who have a legal access to this road and

who have become subject to the CC&Rs that require maintenance obligations. Member Hill asked, in other words not those southern properties. Mr. Gordon said correct because they have no legal right to that road and they don't want to be subject to the CC&Rs. It wouldn't be difficult for them to say, we're in.

Chair Lawrence asked Mr. Whitney if, to complete the application, it is acceptable to have the people currently owning those properties, under those parcel numbers, and under their names to resolve the application issue we're talking about. Mr. Whitney responded, we requested names of the property owners that are accessed off of Mil Drae Lane, we didn't get that and that is why I rejected the application. It's that simple. If we get the names of the folks that are accessed off Mil Drae Lane on the abandonment application, we'll process it. Chair Lawrence asked how many people are on Mil Drae that he would need signatures from for the abandonment, does he know. Mr. Whitney said no. He said Mr. Gordon made a point that we would have to accept Mil Drae Lane before we could abandon it. We aren't going to accept it. It's not up to County standards. Mr. Gordon said we could all agree to disagree. We would be happy to provide owner affidavits from the three property owners who are part of it. We can get that in the next week. Mr. Gordon's understanding was staff was inferring by attaching the assessor's exhibit to the letter, that they would require signatures from all these people who we didn't think were relevant, so I'm happy to do that. As far as excepting the road, Milibar Way was accepted and abandoned and it wasn't up to County standards and staff can recommend denial to accept the road and that goes to the BCC and they can make a determination whether or not they want to accept and abandon or not.

Chair Lawrence opened public comment.

Joan Wright, the Bennett's representative with Allison, MacKenzie, Ltd., noted she has been involved in this matter for a couple of years and has submitted a letter supporting staff's decision. Ms. Wright said Mil Drae Lane is a separate parcel and was always a separate parcel. The developers had designed this and Allyne Drive (aka Milibar Way) to develop the adjacent property so it was going to be a pass through. They ultimately didn't develop the property and ultimately there was no need for Allyne Drive so no one objected to that abandonment. That is not a similar case or precedent for this. This road will continue to be accessed. There are water rights underneath this road and that's probably why it was always privately owned so the developers, Mr. Dragoo and Mr. Milibar, kept title in their name. They ultimately granted easements to the people who bought lots but they kept title and the water rights. Later, after 1976, it appears they changed title companies and some of the conveyances did have title go with the lot so they did 1/10th convey. Some people have easements some people have 1/10<sup>th</sup>'s. After the sale of all ten lots Mr. Milibar and Mr. Dragoo still owned parts of the road. The Bennett's, as a result of the transfer from Mr. Dragoo, now own 15% of that road. They have every right to be on Mil Drae Lane and if it's taken and abandoned to other people it's a taking without compensation. The other thing Mr. Gordon didn't tell you is the Yamamoto parcel, the interior parcel on the left, has a written 50-foot easement to use Mil Drae Lane so are you going to take his interest too and not compensate him. When the parcel map was done in 2009, Ms. Wright opined the County may have made a mistake by relying on the statute that hadn't been adopted but there was access to that back parcel on Mil Drae by prescriptive use for nearly 35 years, at that time. The Bennett's had never used their access off Del Monte they had always used Mil Drae to access their back parcel. The back parcel has been there for 40 years. It's not as though it was just now created and the County made a mistake by using Mil Drae. It had a little flagstick shape that went to Del Monte. That access wasn't used. They always used the other access so that's what they thought entitled them to change the boundary lines not the statute. It's not that the Bennett's haven't offered to pay maintenance, they have. They've been given enormous numbers on what they would have to pay. There hasn't been any maintenance, that's the real problem.

Chair Lawrence closed public comment.

Mr. Gordon said he just confirmed with Herb Nichols there was a reason they believed the original seven property owners filed the applications. We can go get Klaich, Lepori, and Mr. Holcomb to file applications to do this. There was a mention of Yamamoto and in the email I wrote, if they had said we want Yamamoto to chip in as well, trying to carve down as much money as they would want to pay on this road. Yamamoto uses the road as a secondary access, never bothered anyone, had an easement because when his parcel was created the road took some of his property to create the road and as consideration he was given an easement for that. The Bennett's have never participated. They have never provided any consideration. If we want to bring this up to County standards, we can't until we have a system of who owns it and whose going to pay for it. There has been offers made but nothing has been put in writing, they don't want to be subject to the CC&Rs. Their only offer was; we'll be part of a road maintenance agreement and chip in something. We're saying, if you want to be part of our community and you want to chip in then it's only fair to the Dolan's that you have to comply with the setback line. It's only fair to the community that you have to comply with the height restrictions and one single family residence. We're ready to draft those papers today but the email was nonresponsive and if they want to be part of this then they can come join the community. You can't have one foot in and one foot out.

Member Thomas disclosed he has a family member that worked with a Dr. Yamamoto about 15 years ago but he doesn't know if there is a relationship to the one mentioned. A member of the audience said it is a different Yamamoto, apparently, the son. DDA Edwards asked who the family member was that worked for or was an acquaintance of Dr. Yamamoto. Member Thomas said his wife who is a registered nurse and no longer works for him

Chair Lawrence disclosed there is a Ron Yamamoto who was a past Board member of the Nevada Department of Agriculture where he works, who he knew but had no affiliation with. Chair Lawrence met Mr. Yamamoto's son one time fishing a Pyramid Lake about 35 years ago. This disclosure has no impact on his decision today.

DDA Edwards asked if Member Thomas or Chair Lawrence has a pecuniary interest or made commitments in a private capacity to the Yamamoto family with respect to this matter. Both said no. DDA Edwards asked if either of them had received a gift or a loan in connection with this matter. Both said no.

Member Hill moved that, after giving reasoned consideration to the information contained in the staff report and information received during the public hearing, the Washoe County Board of Adjustment deny Appeal Case Number AX16-002 for Lewis, Roca, Rothgerber, Christie LLP and affirm the decision by the Director of the Planning and Development Division to reject an application to abandon the privately owned roadway, Mil Drae Lane. Member Thomas seconded the motion which carried unanimously. **(three for, none against, one recused)**

Mr. Whitney read the appeal procedures.